United Nations A/73/580

General Assembly

Distr.: General
21 November 2018

Original: English

Seventy-third session
Agenda item 136
Programme budget for the biennium 2018–2019

Report on the use of the commitment authority and request for a subvention to the Residual Special Court for Sierra Leone

Report of the Advisory Committee on Administrative and Budgetary Questions

I. Introduction

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on the use of the commitment authority and request for a subvention to the Residual Special Court for Sierra Leone (A/73/379 and A/73/379/Corr.1). In the report, the Secretary-General provides an update on the activities of the Residual Special Court and information on the use of the approved commitment authority for 2018. In addition, approval by the General Assembly is sought for a subvention for the Residual Special Court in the amount of $2,984,600 for 2019 to enable the Court to continue to carry out its mandate. During its consideration of the report, the Committee met with representatives of the Secretary-General, who provided additional information and clarification, concluding with written responses received on 13 November 2018.

2. The report of the Secretary-General was submitted pursuant to General Assembly resolution 72/262 A, in which the Assembly, inter alia, authorized the Secretary-General to enter into commitments in an amount not to exceed $2.3 million to supplement the voluntary financial resources of the Residual Special Court for 2018 as a bridging financial mechanism, and requested him to report on the use of the commitment authority at the main part of the seventy-third session of the General Assembly.

II. Background

3. In his report, the Secretary-General recalls that the Residual Special Court was established by the Agreement between the United Nations and the Government of Sierra Leone concluded in August 2010, with the concurrence of the Security Council, with the mandate to carry out essential residual functions of the Special Court for

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Sierra Leone. The Special Court itself was established in 2002 with the primary objective of prosecuting persons who bore the greatest responsibility for the commission of crimes against humanity, war crimes and other serious violations of international humanitarian law, as well as crimes under relevant Sierra Leonean law, committed within the territory of Sierra Leone. The Special Court completed its mandate on 31 December 2013, having indicted 13 individuals and convicted 9, including the former President of Liberia, Charles Ghankay Taylor. Three of the indicted persons have died and one, Johnny Paul Koroma, remains at large (see A/73/379 and A/73/379/Corr.1, para. 6).

4. The Residual Special Court commenced operations on 1 January 2014, immediately following the closure of the Special Court. The functions of the Residual Special Court comprise non-judicial activities, which are ongoing in nature, and judicial activities, which may or may not occur, being contingent on different factors. Non-judicial functions include witness and victim protection and support, supervision of the enforcement of sentences, assistance to national prosecuting authorities, and preservation and management of archives (ibid., para. 12). Among its judicial functions, the Residual Special Court has the power to prosecute the remaining fugitive, Johnny Paul Koroma, if arrested or to refer his case to a competent national jurisdiction for trial. Additionally, the Residual Special Court may conduct reviews of judgments and contempt of court proceedings as well as preventing double jeopardy by monitoring domestic proceedings (ibid., para. 7). The Residual Special Court carries out its functions from its interim seat in The Hague, and from its sub-office in Freetown for witness protection and support and the coordination of defence matters (ibid., para. 8).

5. The Secretary-General indicates that, pursuant to article 3 of the Agreement between the United Nations and the Government of Sierra Leone on the establishment of the Residual Special Court, the expenses of the Court shall be borne by voluntary contributions from the international community, and that the parties and the Oversight Committee may explore alternative means of funding the Court (ibid., para. 1).

III. Recent activities of the Residual Special Court

6. The Secretary-General provides information on the progress of the implementation of the mandate of the Residual Special Court in section III of his report. With respect to witness protection, the Residual Special Court continued to provide protection services to over 100 witnesses, including by addressing heightened security risks arising out of the elections held in Liberia in October 2017 and in Sierra Leone in March 2018 (ibid., para. 13). With regard to the enforcement of sentences, following the completion of a sentence for one convicted person and the granting of early release for another, there remain six convicts in custody under the supervision of the Residual Special Court: one, Charles Ghankay Taylor, is imprisoned in the United Kingdom of Great Britain and Northern Ireland and five are imprisoned in Rwanda (ibid., paras. 15, 16 and 18–23). The Residual Special Court has also provided assistance to national authorities for domestic proceedings concerning crimes relating to the conflicts in Sierra Leone and Liberia (ibid., paras. 24–27). Archiving activities have progressed, with the completion of a comprehensive archive index expected by March 2019 (ibid., para. 28). Judges and other officials of the Residual Special Court have participated in activities to promote the legacy of the Special Court for Sierra Leone, at no cost to the Residual Special Court, and a jurisprudential legacy project of the Appeals Chamber of the Special Court for Sierra Leone is anticipated to be launched in December 2018 (ibid., paras. 29–34). Additionally, the Residual Special Court has continued to pursue the tracking and arrest of the remaining accused at large (ibid., para. 17).

IV. Current financial situation, resource requirements and request for a subvention

7. Information on the financial status and resource requirements of the Residual Special Court is contained in section IV of the report of the Secretary-General. The Advisory Committee was provided, upon request, with additional detail, reflected in the annex to the present report, which includes a breakdown by year of voluntary contributions received from donors, subventions received from the regular budget and total requirements and expenditures, as well as unspent balances, since the inception of the Residual Special Court.

Voluntary contributions

8. In section VI of his report, the Secretary-General describes the combined fundraising efforts of the Secretary-General, the Government of Sierra Leone, members of the Oversight Committee and the principal officials of the Residual Special Court. In 2018, these efforts included a letter of appeal by the Secretary-General to all Member States, dozens of fundraising meetings and diplomatic briefings, and, for the first time, press releases and the use of social media to raise awareness of the financial situation of the Court (ibid., paras. 40 and 47–55). Upon enquiry, the Advisory Committee was informed that, as at 31 October 2018, the Residual Special Court had received $5,000 in voluntary contributions, which were utilized to cover costs relating to the fifth plenary meeting of the judges of the Residual Special Court, and pledges amounting to 140,000 euros, of which 130,000 euros were pledged exclusively for judicial functions. The Secretary-General also indicates that there are minimal prospects, if any, for future voluntary contributions (ibid., paras. 55 and 64). **The Committee continues to be concerned about the persistent funding shortages of the Residual Special Court, heightened by the lack of forthcoming contributions, and again emphasizes the ongoing need for intensified fundraising efforts by the Secretary-General, including by broadening the donor base of the Residual Special Court and developing more innovative fundraising approaches.**

9. The Advisory Committee was informed, upon enquiry, that the Government of Sierra Leone provides in-kind support to the Residual Special Court, in addition to its obligations under the above-mentioned Agreement and its participation in fundraising. These in-kind contributions include: premises and security services in Freetown; assistance with witness protection activities, if needed; and the monitoring of convicted persons who have been granted early release. **The Committee welcomes the provision of in-kind contributions by the Government of Sierra Leone to the Residual Special Court and encourages further cooperation in support of the mandate of the Court, without prejudice to its independence and judicial requirements.**

Resource requirements

10. The Secretary-General indicates that the 2019 budget of the Residual Special Court approved by its Oversight Committee amounts to $2,984,600, consisting of $2,394,900 for non-judicial activities and $589,700 for judicial activities, compared with the approved requirements of $2,965,900 for 2018.

11. The report of the Secretary-General and supplementary information provided to the Advisory Committee indicate that resource requirements in the amount of $1,335,900 would provide for: (a) the continuation of the 13 existing full-time non-judicial positions, of which 6 are located in The Hague (1 D-2, 2 P-4, 2 P-2 and 1 P-1) and 7 in Freetown (1 P-4, 1 P-1, 3 National Professional Officer and 2 Local

level); (b) pro rata remuneration of four months for the Prosecutor (Under-Secretary-General) and the Principal Defender (P-4), who work remotely and only as necessary; and (c) one Local level position in The Hague funded through general temporary assistance to provide archiving support (ibid., para. 38). An additional requirement of $160,000 would provide for additional staff in the event of judicial activity, such as proceedings related to contempt of court.

12. With respect to non-staffing requirements, an amount of $429,700 is requested for judicial activities, under compensation to judges ($129,700), travel ($178,000), contractual services ($50,000) and general operating expenses ($72,000). The Advisory Committee notes that while these requirements relate to judicial proceedings that did not take place in previous years and may again not materialize in 2019, they continue to be included in the request for a subvention (see A/71/613, para. 15, and A/72/7/Add.20, para. 15). **In this respect, the Committee recalls the stipulation of the General Assembly on the need for the Residual Special Court to adopt a realistic approach to budgeting reflecting actual needs (see resolution 72/262 A, sect. VIII, para. 5). While recognizing that the occurrence of the judicial functions of the Residual Special Court may not be fully anticipated, the Committee emphasizes that resources for judicial activities should be based on past experiences, best available projections and the identification of further operational efficiencies, without prejudice to the judicial requirements of the Court (see A/71/613, para. 16, and A/72/7/Add.20, para. 15).**

13. With respect to official travel, requirements for 2019 are estimated at $288,000, including $110,000 for non-judicial travel. On the basis of the breakdown of the travel requirements provided to it, the Advisory Committee notes that travel in the amount of $7,500 (or 6.8 per cent of the non-judicial requirements) is planned for fundraising purposes. Upon enquiry, the Committee was informed that, while most fundraising meetings would be held in The Hague, limited fundraising activities by the Prosecutor and the Registrar would take place in New York and Brussels. **Considering the severe scarcity of financial resources, the Committee reiterates its previous recommendations (see A/71/613, para. 18, and A/72/7/Add.20, para. 18) and continues to stress that the Residual Special Court should strictly limit travel requirements to ensure that any travel is directly associated with its core functions.**

14. In his report, the Secretary-General indicates that the Residual Special Court has continued to implement efficiency measures, such as the use of short-term consultancies, interns and pro bono services to supplement its staff resources as required (see A/73/379 and A/73/379/Corr.1, para. 45). For instance, the Residual Special Court has retained the services of the Auditor General of South Africa to conduct the annual audit of the Court on a pro bono basis. The Advisory Committee was informed, upon enquiry, that this arrangement results in savings of approximately $25,000–$30,000 per annum in professional audit fees.

15. The Secretary-General indicates that the International Residual Mechanism for Criminal Tribunals has continued to provide logistical and administrative support to the Residual Special Court on a cost-reimbursable basis, pursuant to section VIII, paragraph 7, of General Assembly resolution 72/262 A (ibid., para. 57). On the basis of information provided to it, the Advisory Committee notes that resources in the amount of $379,700 would provide for the cost of sharing an administrative platform with the International Residual Mechanism, the rental of office space within its premises in The Hague and the provision of information technology and other administrative services. The Committee was informed, upon enquiry, that while no reduction in the cost-sharing arrangement could be achieved at this time, the two institutions remained open to revisiting the arrangement in due course with a view to reducing its cost.

16. The Advisory Committee notes that the General Assembly, in section VIII, paragraph 5, of its resolution 72/262 A, encouraged further efforts to identify efficiencies, without prejudice to the judicial requirements of the Residual Special Court. **The Committee therefore reiterates its view that the Residual Special Court should redouble its efforts to lower the costs of its operations (see A/72/7/Add.20, para. 19).**

Request for a subvention

17. On the basis of the low level of voluntary contributions pledged and received in 2018 and the minimal prospects for additional contributions in the future, the Secretary-General indicates that the Residual Special Court will not have sufficient funds to continue its mandate in 2019. To address the funding shortfall, the Secretary-General is seeking approval by the General Assembly of a subvention from the regular budget in the amount of $2,984,600, which represents the full amount of the requirements of the Residual Special Court for 2019, with the understanding that any contribution received would reduce the utilization of the funding provided by the United Nations (see A/73/379 and A/73/379/Corr.1, paras. 64 and 65).

18. With reference to the annex to the present report, the Advisory Committee notes that the commitment authority authorized by the General Assembly in the amounts of $2,438,500 for 2016 and $2,800,000 for 2017 exceeded the expenditures of the Residual Special Court in the corresponding year, after utilization of the voluntary contributions. According to the information provided, unspent balances amounting to $939,600 in 2016 and $63,600 in 2017 have been carried forward into 2017 and 2018, respectively. **The Committee recalls that the subvention from the regular budget is a bridging financing mechanism approved on the basis of set conditions for the purpose of supplementing insufficient voluntary contributions (see A/72/7/Add.20, para. 26). The Committee recommends that the General Assembly request the Secretary-General to return any unused balance of commitment authority funds, in accordance with the decision of the General Assembly (see resolution 72/262 A, sect. VIII, para. 6).**

V. Conclusions and recommendations

19. **The Advisory Committee reiterates, once again, its concern regarding the sustainability of voluntary contributions to fund the activities of the Residual Special Court (see A/70/7/Add.30, para. 21, A/71/613, para. 23, and A/72/7/Add.20, para. 23). The Committee therefore recommends that the General Assembly request the Secretary-General to continue to analyse the options concerning the long-term arrangements for the Residual Special Court in greater detail, including by identifying possible savings and economies of scale, and to report thereon and on the use of the commitment authority.**

20. **The Advisory Committee also notes that, after four consecutive requests for subventions to support the Residual Special Court, the practice is now no longer exceptional in nature. At the same time, the Committee notes that there is still no change to the voluntary nature of the funding arrangements for the Court.**

21. **In view of the projected funding shortfall for 2019, the Advisory Committee recommends that the General Assembly authorize the Secretary-General to enter into commitments, as a bridging financing mechanism, in an amount not to exceed $2,537,000 for the period from 1 January to 31 December 2019. The Committee recommends that the Assembly request the Secretary-General to report, during the main part of its seventy-fourth session, on the use of the commitment authority.**

22. **The Advisory Committee reiterates that the final use of the commitment authority will depend upon the receipt of voluntary contributions from donors. The Committee continues to stress that its recommendations are made on the basis that:**

(a) **The Residual Special Court intensifies its efforts to seek voluntary contributions, including through more innovative fundraising approaches;**

(b) **If voluntary contributions are received in excess of the remaining requirements for the Residual Special Court for 2019, any corresponding funding provided under the commitment authority to the Court for the period would be refunded to the United Nations; and**

(c) **Additional measures for achieving efficiencies in the Residual Special Court are taken.**

Annex

Residual Special Court for Sierra Leone: total funding v. actual expenditure for judicial and non-judicial functions, 2014–2018

(United States dollars)

Year	*Approved budget*[a]	*Actual balance brought forward on 1 January*	*Actual voluntary contributions*	*Interest earned and other adjustments*	*Commitment authority authorized by the General Assembly*	*Actual commitment received*	*Total funding available for the year*	*Commitment authority used*	*Actual full-year expenditure*	*Unspent balance*	*Commitment authority returned*
	(a)	*(b)*	*(c)*	*(d)*	*(e)*	*(f)*	*(g)=(b)+(c)+(d)+(f)*	*(h)*	*(i)*	*(j)=(g)-(i)*	
2014[b]	2 128 700		3 370 268	(125 357)	–	–	3 244 911	–	2 098 315	1 146 596	–
2015	3 454 000	1 146 596	2 681 423	(68 825)	–	–	3 759 194	–	2 569 355	1 189 839	–
2016	3 596 300	1 189 839	27 462	1 834	2 438 500	2 438 500	3 657 635	1 528 219	2 718 058	939 577	–
2017	2 980 500	939 577	164 942	(95 543)	2 800 000	1 805 900	2 814 876	2 681 882	2 751 281	63 595	–
2018[c]	2 965 900	63 595	5 000	(36 000)	2 300 000	2 264 000	2 296 595	–			–

[a] Approved by the Oversight Committee.

[b] The Residual Special Court for Sierra Leone commenced its operations on 1 January 2014.

[c] Represents the status as at 30 September 2018. Actual full-year expenditure, total utilization of commitment authority and unspent balance for 2018 will be available at year-end.